IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5140 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALOCH ANVARKHAN AKARKHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DIPAK PATEL with MR SK PATEL for Petitioner(s) : 1,
MR MAULIK NANAVATI AGP for Respondent No.1
MR TUSHAR MEHTA for Respondent(s) : 3,
M/S THAKKAR ASSOC. for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 27/06/2007

ORAL JUDGMENT

1. The petitioner prays for writ of mandamus to the respondents to pay the petitioner his legitimate amount of pension with reasonable rate of interest on the ground that initially the

petitioner joined the services of respondent No.3 on 11.11.1964 as Octroi Clerk and later on served as Octroi Inspector, as per the resolution No.21 dated 4.7.1966 passed by the then Gram Panchayat. The petitioner has also served as a Panchayat Clerk and came to be retired on 31.3.1992.

2. The claim of the petitioner is based on the ground that the petitioner has served the respondent-Panchayat in different capacities for about 27 years and in view of various Government Resolutions and the decision of the apex court in the case of **Raman Lal Keshav Lal Soni vs. State of Gujarat reported in AIR 1984 SC 161,** the petitioner is entitled to receive pensionary benefit after the retirement.

3. Learned Advocate Shri Tushar Mehta appearing for the respondent-Panchayat, now converted as Bayad Municipality Borough with effect from 11.8.2005, submitted that even initially also the appointment of the petitioner was not in accordance with relevant rules with regard to recruitment of employee in the Gram Panchayat. Shri Mehta, learned advocate for the respondent-Panchayat, has further submitted that the concerned Authority at the relevant point of time viz. Development Commissioner, Gujarat State, Gandhinagar, in Revision Application filed by the petitioner has examined the above issue and held that as the petitioner has not preferred any appeal before the Appellate

Authority, the revision was barred.

4. The learned AGP, Mr.Maulik Nanavati appearing for the State, has relied on the additional affidavit in reply filed by the Under Secretary of the State and submitted that under Section 203 of the Gujarat Panchayat Act, Gram Panchayat or Nagar Panchayat had no authority to recruit the employees and the above aspect was clarified by the Circular dated 25.8.1983 by the Department of Panchayat, Government of Gujarat. According to learned AGP, Mr.Nanavati appearing for respondent State, appointment of the petitioner is contrary to the prevailing rules and regulations and therefore benefit of pension cannot be conferred.

5. Having heard learned counsel appearing for the respective parties and perusing the record of the case, it is clear that the petitioner was appointed by way of resolution passed by the Gram Panchayat. However, I am of the opinion that in absence of any specific rules governing the service conditions of Panchayat employees shown by the learned advocate for the petitioner and particularly no rules shown to this court with regard to entitlement of the petitioner for pensionary benefit as erstwhile employee of the Panchayat, no mandamus can be issued in this regard.

6. At this stage, all the learned counsel for the parties have jointly submitted that since the Panchayat has now been converted into Bayad

Municipal Borough with effect from 11.8.2005 and that the petitioner has served respondent-Panchayat for about 27 years of service, it would be in fitness of things if the petitioner is granted benefits, if any, arising out of any right accrued to him on the basis of any Government Resolutions or Circulars with regard to grant of pensionary benefit to erstwhile employee of the Panchayat. It is therefore directed that the petitioner will make the representation to the Director of Municipality in this regard within 10 days from today and the Director of Municipality will decide the same in accordance with law at the earliest.

7. Subject to the above direction, the petition stands disposed of. Rule stands discharged. No order as to costs.

(**ANANT S. DAVE, J.**)

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